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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/780,955	02/18/2004	Rosario Rizzo	71298	2343
23872	7590	03/10/2005	EXAMINER	
MCGLEW & TUTTLE, PC 1 SCARBOROUGH STATION PLAZA SCARBOROUGH, NY 10510-0827			KEELER, KIMBERLY A	
			ART UNIT	PAPER NUMBER
			1723	
DATE MAILED: 03/10/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/780,955

Applicant(s)

RIZZO, ROSARIO

Examiner

Kimberly Keeler

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Applicant's arguments with respect to claims 1, 2, and 4-7 have been considered but are moot in view of the new ground(s) of rejection.
3. Claims 1, 2, and 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kudlaty (US Patent No. 3,341,018) in view of Ashman (US Patent No. 6,299,763).
4. As to claim 1, Kudlaty ('018) discloses a filtering device comprising one hollow body (10) defining a filtering chamber (93) and around this at least one longitudinal channel (63), a first end connection (76), a second end connection (78), a removable filter (50) placed in said chamber, and wherein: the first connection (76) has an entrance anti-chamber (87) that communicates, on the one side, with an entrance passage (24) and, on the other, with an entrance conduit (11) communicating with said filtering chamber (93) and with an entrance compartment (25) that communicates with said longitudinal channel (63) in said body (10), the second connection (78) has an evacuation passage (35) communicating with an exit conduit (84) communicating with said filtering chamber, and an exit compartment (34) communicating with

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said longitudinal channel (63) in said body, in the anti-chamber of said first connection a diverter means (80,60) is located and movable between a first position (Figure 4) in which said entrance passage (24) communicates with said longitudinal channel through the entrance compartment (25), and a second position (Figure 3) in which said entrance passage (24) communicates with said filtering chamber (93) through the entrance conduit (11), yet he is silent to the use of an aspiration piece and aspiration unit coupled to the filter body. However, Ashman ('763) discloses a filtration device comprising a hollow body (10) containing a filter (48) and identical first and second end connections (13,15) wherein the first and second end connections are coupled to an aspiration piece and aspiration filter unit, respectively. It is considered to have been obvious to one of ordinary skill in the art to modify Kudlaty's teaching of a specific filter housing with diverter means to include connections to an aspiration piece and aspiration filter unit because the combination of an aspirator and a filter are well known in the art as taught by Ashman in column 1 lines 49-52.

5. Kudlaty ('018) further teaches a diverter means (80,60) consisting of a tubular piece (62) movable around an oscillation axis (2) and having an inlet permanently in line with said entrance passage (24) and an outlet which in said first position is in line with the entrance compartment (25) and in said second position is positioned in line with the entrance conduit (11), which meet's applicant's claim 2.

6. Kudlaty ('018) further discloses the first and second connections are identical in construction and wherein only the first connection is provided with a diverter means, which meet's applicant's claim 4.

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7. Kudlaty ('018) further discloses the first and second connections (76,78) consisting of two complementary casings, facing and joined to one another with annular fasteners, wherein every connection is fastened to the respective end of the body (10) and features an internal part (11, 84) associated by sealing with the filtering chamber (93) with the interposition of at least one seal and wherein the conduit (11) communicating with the filtering chamber is in said internal part, which meet's applicant's claim 5.

8. Kudlaty ('018) further teaches a diverter means that is movable between said first and said second position and features passages for putting alternately into communication the entrance passage with the entrance compartment and with the filtering chamber, which meet's applicant's claim 6.

9. Kudlaty ('018) further discloses the first and second connections are identical in construction and wherein only the first connection is provided with a diverter means, which meet's applicant's claim 7.

10. Claims 3 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kudlaty (US Patent No. 3,341,018) in view of Ashman (US Patent No. 6,299,763) and Jousson (US Patent No. 4,907,744).

11. Kudlaty ('018) is silent to the use of the diverter means as pressed and kept in a first position by a spring and is engaged and linearly movable in a second position by a button. However, Jousson ('744) does teach the use of the diverter means as pressed and kept in a first position (Figure 1) by a spring (27) and is engaged and linearly movable in a second position (Figure 2) by a button (6). It is considered that it would have been obvious to one of ordinary

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skill in the art to substitute the sliding mechanical diverter of Jousson ('744) for the sliding mechanical diverter of Kudlaty ('018) as one structural equivalent for another (i.e. button/spring for a handle manipulation) in a fluid flow environment. Kudlaty ('018) teaches a diverter means on page 2 lines 46-52 and describes the use of the handle to manipulate fluid flow to a first or second position. Jousson ('744) also teaches a diverter means on page 6 lines 44-50 to divert fluid flow into a first or second position, however, Jousson ('744) teaches the use of a pushbutton and spring for manipulation.

12. Kudlaty ('018) further discloses the first and second connections are identical in construction and wherein only the first connection is provided with a diverter means, which meet's applicant's claim 8.

13. Claims 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kudlaty (US Patent No. 3,341,018) in view of Ashman (US Patent No. 6,299,763) and Jousson (US Patent No. 4,907,744).

14. As to claims 9 and 10, Kudlaty ('018) teaches a hollow body with a filtering chamber and at least one longitudinal channel; providing a first end connection coupled to one end of said body, said first end connection having an entrance anti-chamber containing a movable diverter means that communicates, on the one side, with an entrance passage and on the other side communicates with an entrance conduit leading to said filtering chamber in a second position and with an entrance compartment leading to said longitudinal channel in a first position; providing a second end connection, said second end connection having an evacuation passage communicating with said longitudinal channel. Kudlaty is silent to the use of aspiration piece

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coupled to the entrance passage and an aspiration unit coupled to the second end connection.

However, Ashman ('763) discloses a filtration device comprising a hollow body (10) containing a filter (48) and identical first and second end connections (13,15) wherein the first and second end connections are coupled to an aspiration piece and aspiration filter unit, respectively. It is considered to have been obvious to one of ordinary skill in the art to modify Kudlaty's teaching of a specific filter housing with diverter means to include connections to an aspiration piece and aspiration filter unit because the combination of an aspirator and a filter are well known in the art as taught by Ashman in column 1 lines 49-52. Kudlaty ('018) is also silent to the use of the diverter means as pressed and kept in a first position by a spring and is engaged and linearly movable in a second position by a button. However, Jousson ('744) does teach the use of the diverter means as pressed and kept in a first position (Figure 1) by a spring (27) and is engaged and movable in a second position (Figure 2) by a button (6). It is considered that it would have been obvious to one of ordinary skill in the art to substitute the sliding mechanical diverter of Jousson ('744) for the sliding mechanical diverter of Kudlaty ('018) as one structural equivalent for another (i.e. button/spring for a handle manipulation) in a fluid flow environment. Kudlaty ('018) teaches a diverter means on page 2 lines 46-52 and describes the use of the handle to manipulate fluid flow to a first or second position. Jousson ('744) also teaches a diverter means on page 6 lines 44-50 to divert fluid flow into a first or second position, however, Jousson ('744) teaches the use of a pushbutton and spring for manipulation.

15. As to claim 11, Kudlaty ('018), Ashburn ('763), and Jousson ('744) teach the invention as claimed Kudlaty further teaches a first and second connections are identical in construction

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and wherein only the first connection is provided with a diverter means, which meet's applicant's claim 11.

16. As to claim 12, Kudlaty ('018), Ashburn ('763), and Jousson ('744) teach the invention as claimed Kudlaty further teaches the first and second connections (76,78) consisting of two complementary casings, facing and joined to one another with annular fasteners, wherein every connection is fastened to the respective end of the body (10) and features an internal part (11, 84) associated by sealing with the filtering chamber (93) with the interposition of at least one seal and wherein the conduit (11) communicating with the filtering chamber is in said internal part, which meet's applicant's claim 12.

17. As to claim 13, Kudlaty ('018), Ashburn ('763), and Jousson ('744) teach the invention as claimed Kudlaty further teaches a diverter means that is movable between said first and said second position and features passages for putting alternately into communication the entrance passage with the entrance compartment and with the filtering chamber, which meet's applicant's claim 13.

Response to Arguments

18. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In response to applicant's

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argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). The primary reference teaches a diverter means with manual handle manipulation. Consequently, Jousson was not relied upon to teach the functions of a spraying apparatus in connection with a filter and aspirator, but it is relied upon to teach a functionally equivalent valve structure that manipulates fluid flow. One of ordinary skill in the art would have recognized that both Kudlaty and Jousson are teaching equivalent valve structures that could be used in either apparatus for the purpose of manually manipulating fluid flow. Applicant contends that Kudlaty teaches a filter housing for industrial use and that one would not combine the teachings of a filter with a surgical device. This argument is not persuasive because Kudlaty's claims are drawn to a generic filter with a by-pass assembly and, as discussed previously, Jousson was relied upon to teach an equivalent hand manipulated diverter means.

Conclusion

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**


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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly Keeler whose telephone number is 571-272-2460. The examiner can normally be reached on Monday-Friday 9:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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